



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

WRIT PETITION NO. 19468 OF 2021 (GM-CPC)

BETWEEN:

SRI. NAGANAIIKA
S/O. LATE KARI NAIKA
AGED ABOUT 66 YEARS
R/AT NO.916, JANATHA COLONY,
GUNDLUPET TOWN, GUNDLUPET,
CHAMRAJNAGAR DISTRICT-571 111.

...PETITIONER

(BY SRI. MUNIYAPPA, ADVOCATE)

AND:

1. SRI. G.H. AJAY
S/O. M. HEMANTHAKUMAR
AGED ABOUT 39 YEARS
2. SRI. G.H. ABAY
S/O. M. HEMANTHAKUMAR
AGED ABOUT 39 YEARS
3. SRI. G.H. AKSHAYA
S/O. M. HEMANTHAKUMAR
AGED ABOUT 37 YEARS

ALL ARE R/AT NO.15
SAI BITTAL VIHAR
BEHIND BRINDAVAN APARTMENT
BHARATH CO-OPERATIVE SOCIETY
BHCS LAYOUT, UTHARAHALLI,
SIKKALSANDRA, BENGALURU 560 061

4. SRI M. HEMANTHAKUMAR
S/O. LATE MAHADEVANAYAK
AGED ABOUT 46 YEARS,
R/AT NO.126, POST OFFICE ROAD,
GUNDLUPET TOWN,





CHAMRAJNAGAR DISTRICT-571 111

5. SRI. PARASHIVA
FATHER'S NAME NOT KNOWN,
AGED ABOUT 65 YEARS,
PROPRIETOR OF SANDESH BAR AND RESTAURANT,
GUNDLUPET TOWN,
CHAMARAJANAGAR DISTRICT-571111

6. SRI. SHIVAMALLAPPA
FATHER'S NAME NOT KNOWN
AGED ABOUT 75 YEARS
TENANT IN OCCUPATION OF
SARDAR TALKIES, GUNDLUPET TOWN,
CHAMRAJNAGAR DISRICT-571 111

SRI. SUBBEGODA
SINCE DEAD BY LRS

7. SMT. KAMALAMMA
W/O LATE SUBBEGOWDA
AGED ABOUT 65 YEARS

8. SRI GANESH
S/O LATE SUBBEGOWDA
AGED ABOUT 40 YEARS

9. SRI PRAKASH
S/O LATE SUBBEGOWDA
AGED ABOUT 38 YEARS

10. SMT. MANJULA
D/O LATE SUBBEGOWDA
AGED ABOUT 36 YEARS

11. SMT. JAYAMALA
D/O LATE SUBBEGOWDA
AGED ABOUT 30 YEARS

RESPONDENT NO.6 TO 10 ARE
R/AT GUNDLUPET TOWN
NEXT TO ITI COLLEGE,
OOTY MAIN ROAD, GUNDLUPET,
CHAMRAJNAGAR DISTRICT-571 111



12. SMT. SUJATHA
W/O. K. NAGANAIIKA @ KAAKASURA
AGED ABOUT 57 YEARS
R/AT NO.916, JANATHA COLONY,
GUNDLUPET TOWN,
CHAMARAJANAGAR DISTRICT-571 111

13. SMT. NAGARATHNA URF KULLAMMA
W/O. LATE M. HEMANTHKUMARA
AGED ABOUT 50 YEARS

14. SRI. HARSHAN KUMARA H
S/O. LATE M. HEMANTHKUMARA
AGED ABOUT 20 YEARS

RESPONDENT NO.13 AND 14 ARE
RESIDING AT NO.211, 8TH WARD,
OLD HOSPITAL ROAD,
GUNDLUPET TOWN,
CHAMARAJANAGARA DISTRICT-571 111.

...RESPONDENTS

(BY SRI. NAGESH S., ADVOCATE FOR RESPONDENT NOS.1 TO 3 (VK RETURNED WITH OFFICE OBJECTION IN RESPECT OF RESPONDENT NO.3);

VIDE ORDER DATED 15.11.2021 SERVICE OF NOTICE TO RESPONDENT NOS.4 TO 14 STANDS WAIVED;

SRI. S. ANIL KUMAR, ADVOCATE FOR RESPONDENT NO.13;

SRI. VINAYAKA B., ADVOCATE FOR RESPONDENT NO.2 (VK FILED) AND ALSO FOR RESPONDENT NO.1 (VIDE ORDER DATED 12.07.2022) (VK NOT FILED))

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 31ST AUGUST 2021 ON I.A.NO.XIX IN FDP NO.05/2017 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC GUNDLUPET, VIDE ANNEXURE-A AND ALLOW THE APPLICATION FILED BY THE PETITIONER SEEKING TO IMPEAD HIM AS RESPONDENT NO.8 IN FDP NO.05/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AT GUNDLUPET, VIDE ANNEXURE-C AND ETC.,



THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the applicant in FDP No.5/2017 pending consideration before the Senior Civil Judge and JMFC, Gundlupet, challenging an order dated 31.08.2021 in terms of which, the Court rejected his application to be impleaded in the proceedings.

2. The respondent Nos.1 to 3 herein filed O.S.No.26/2002 against respondent No.4 and tenants occupying portions of suit properties for partition and separate possession of their share. One of the suit properties was item No.3 which purportedly measured 100 x 45 feet. The suit after contest was decreed. This was challenged by respondent No.4 in RFA No.1295/2005 where it was held;

"12. So far as item No.3 is concerned admittedly as on the date of filing suit, the same was not alienated. According to defendant No.1 half of the site is sold prior to the institution of the suit for which the plaintiffs' mother was also



a signatory. But unfortunately no document is produced before the Court. Even if we consider that there was an agreement to sell the property the same has not been sold prior to the institution of the suit. If any transactions have taken place subsequent to the institution of the suit, the same would not bind the plaintiffs share. Accordingly, we hold that the plaintiffs are entitled for share in the aforesaid property."

3. Therefore, final decree proceedings was initiated in FDP No.5/2017. The wife of the applicant herein (respondent No.12 herein) was impleaded in FDP No.5/2017 on the premise that she had purchased the suit item No.3 from the respondent No.4 herein. However, the wife of the petitioner herein claimed that she did not purchase item No.3. After she was impleaded, the Court framed additional issue Nos.7 to 9 which were as follows:

"7. Whether plaintiffs/petitioners prove that sale deed dated 11.08.2003 executed in favour of respondent no.5 husband in respect of suit property not binding on them?"



8. Whether respondent no.5 proves that her husband by name K.Naganayaka is the bonafide purchaser of item no.3 suit property?

9. Whether respondent no.5 proves that suit or final decree proceedings is not maintainable for non-joinder of necessary parties?"

4. The respondent No.12 herein was examined as RW5 and the petitioner was examined as RW6 and they marked Exs.R15 to 18.

5. The Final Decree Court in terms of the Order dated 18.02.2021, answered the aforesaid issues and held that the suit was initially numbered as O.S.No.46/1998 before Civil Judge (Sr.Dvn.) Nanjangudu and after the establishment of the Court of Civil Judge (Sr.Dvn.) at Chamarajanagar, it was transferred and renumbered as O.S.No.26/2002. It held that respondent No.12 claimed that petitioner had purchased suit item No.3 from respondent No.4 during the pendency of the suit. It held that petitioner was not a bonafide purchaser as he did not



issue any paper publication indicating his interest to purchase suit item No.3. It held that petitioner did not produce any documents to establish that respondent No.4 sold item No.3 to meet any legal necessity. It referred to observations made by this Court in RFA No.1295/2005 and held that respondent No.4 was the Kartha of the family and therefore, he had no absolute right to convey suit item No.3 to the petitioner. Consequently, it held that the sale deed dated 11.08.2003 did not bind the respondent Nos.1 to 3. It held that since petitioner had purchased the property during the pendency of the suit, he was not a necessary party to the final decree proceedings.

6. The respondent Nos.1 to 3 herein who had initially filed the suit in respect of item No.3 which measured 100 x 45 feet, changed the measurement to 100 x 95 feet which allegedly encompassed the property purchased by the petitioner from respondent No.4 in terms of a sale deed dated 11.08.2003. The petitioner therefore filed an application to be impleaded as respondent No.6 in



FDP No.5/2017. The said application was contested by the respondent Nos.1 to 3 on various grounds.

7. The Trial Court in terms of the impugned order rejected the application on the ground that the petitioner was already examined as RW.6 and he had stated that he was a bonafide purchaser of suit item No.3 as per the sale deed dated 11.08.2003. It held that after conclusion of the evidence of both the parties, the Court had passed orders on 18.02.2021 by which, it observed that the respondent Nos.1 to 3 being the children of respondent No.4 had a share in suit item No.3. It also held that the sale deed executed by respondent No.4 in favour of petitioner is not a bonafide sale of item No.3. The Court held that the sale executed in favour of the petitioner herein was not binding upon the respondent Nos.1 to 3.

8. Being aggrieved by the said order, the petitioner is before this Court.



9. The learned counsel for the petitioner submits that the petitioner had to come on record in final decree proceedings as the respondent Nos.1 to 3 had changed the dimensions of the suit item No.3 from 100 x 45 feet to 100 x 95 feet which encompassed the property purchased by the petitioner. He therefore contends that the question whether the petitioner was a bonafide purchaser or not, was inconsequential, as the Court was bound to work out equities in final decree proceedings by allotting the properties purchased by them to the share of the defendant No.1 or to substitute the security in favour of the petitioner, so as to compensate the value of the property sold to him. He therefore, contended that the petitioner was a proper and necessary party to be impleaded in final decree proceedings, in view of the unilateral act of respondent Nos.1 to 3, in changing the measurement of suit item No.3.

10. Per contra, the learned counsel for the respondent Nos.1 to 3 submitted that the wife of the



petitioner who was arrayed as respondent No.5 in FDP No.5/2017 had made a categorical statement that she has not purchased any portion of item No.3 of suit property. He therefore contends that the petitioner cannot now contend that he purchased the portion of suit item No.3. He further contends that the purchase made by the petitioner is during the pendency of proceedings in O.S.No.26/2002 and hence the petitioner has no *locus standi* to come on record and is bound by the decree that is passed against the defendant No.1, in view of Section 52 of the Transfer of Property Act, 1882. He also doubts the sale deed set up by the petitioner to sustain his claim to come on record in FDP No.5/2017.

11. I have considered the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent Nos.1 to 3.

12. The contention of the petitioner that the suit item No.3 was earlier mentioned as measuring 100 x 45 feet was later changed into 100 x 95 feet in FDP



No.5/2017 is not seriously disputed by the respondent Nos.1 to 3. The petitioner contends that the property now claimed by the respondent Nos.1 to 3 encompasses the property purchased by him from the defendant No.1. In support of the same he placed on record the sale deed dated 11.08.2003 executed by the defendant No.1 in respect of portion of item No.3 measuring 100 x 45 feet. Therefore, even if it is assumed that the petitioner is a purchaser *pendente lite* and even if he is treated to be not a bonafide purchaser, yet since the sale is brought about by the defendant No.1 in favour of petitioner, the final decree Court is bound to work out equity in favour of the petitioner.

13. If the final decree Court is of the opinion that there are no other properties, where the petitioner cannot be accommodated, then it is open for the petitioner to take such other measures as are available in law. However, if final decree Court is of the opinion that the properties that are sold by respondent No.4 could be



appropriated against his share, the final decree Court is bound to consider the claim of the petitioner.

14. In this regard, it is apposite to refer to the judgment of Hon'ble Apex Court in the case of ***Khemchand Shankar Choudhari and another Vs. Vishnu Patil and another [AIR 1983 SC 124]***, where it was held as follows:

5. The question for consideration is whether the High Court, the Government and the Revenue Authorities were right in the circumstances of the case in holding that the appellants had no locus standi to ask for an equitable partition particularly when the sales in favour of the appellants were not in dispute.

6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee



is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their



names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate under Section 54 of the Code of Civil Procedure has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the share of a deceased party in favour of his legatees. In the case of insolvency of a party, the Official Receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject-matter of partition can exercise all



the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of Section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject-matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out "in accordance with the law



(if any) for the time being in force relating to the partition or the separate possession of shares”.

15. Consequently, this petition is **allowed**. The impugned order dated 31.08.2021 is set aside. The application (I.A.No.XIX) filed by the petitioner under Order I Rule 10(2) read with Section 151 of Civil Procedure Code is allowed and the petitioner is permitted to be impleaded as respondent No.8 before final decree Court. It is open for the respondents to contest the claim of the petitioner herein in accordance with law.

**Sd/-
JUDGE**

HJ
List No.: 1 Sl No.: 11